

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

2025:PHHC:063955



1. ESA-43-2018 (O&M)

Date of decision: 14.05.2025

KAMAL KISHORE (DECEASED) THROUGH LRS. ..Appellant

Versus

VIJAYA MITTAL (DECEASED) THROUGH LRS. & ANR ..Respondents

2. ESA-175-2018 (O&M)

KAMAL KISHORE (DECEASED) THROUGH LRS. ..Appellant

Versus

SUNITA RANI AND ORS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Sherwal, Advocate
for the appellant.

Mr. J.K. Singla, Advocate
Ms. Shivani Singla, Advocate
for respondent No.1 (in ESA-43-2018)
for respondent No.5 to 8 (in ESA-175-2018).

ANIL KSHETARPAL, J(Oral)

1. There is a decree for recovery of Rs.73,193.20/- along with interest at the rate of 12% per annum with effect from 22.09.1997 till 31.01.2003 and against M/s Atma Ram Amar Nath, Sh. Dharampal and Sh. Sham Sunder and in favour of the appellant. There is another decree for recovery of Rs.7,01,026.68/- along with interest at the rate of 19.75% per annum with quarterly rests on decretal amount in favour of Indian Overseas Bank. It has come on record that originally, the property was owned by late Sh. Atma Ram, who died resulting in inheritance of property in favour of seven class I heirs including two sons and four daughters and a widow. In execution of a decree for recovery of Rs.73,193.20/- in favour of the appellant, the property inherited from Sh. Atma Ram by class I heirs has been sold, though, five class I heirs namely four



daughters and a widow were not the judgment debtors. The disputed property is a shop in Sadar Bazar, Barnala. The First Appellate Court has found that the decree holder played fraud by himself purchasing the property. The correctness of the aforesaid finding of fact is not disputed.

2. Learned counsel for the appellant submits that the impugned order is required to be modified on following two grounds:-

i. Indian Overseas Bank has assigned its rights to the appellant on 15.02.2012 as he paid Rs.21,00,000/- to the bank, hence, he is required to be substituted in place of Indian Overseas Bank.

ii. He is entitled to recover the amount as per decree dated 31.01.2003.

3. Learned counsel for respondents submits that appellant can recover the amount, which has been paid by him to the bank apart from the amount, which has been decreed in his favour.

4. The execution petition filed by the appellant is pending.

5. Consequently, while upholding the substantive part of the First Appellate Court's order setting aside the auction in favour of the appellant, the Executing Court is requested to proceed with the execution petition.

6. Both the appeals are disposed of.

7. All the pending miscellaneous applications, if any, are also disposed of.

May 14th, 2025

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*

(ANIL KSHETARPAL)
JUDGE